FARAD CONTINUATION SHEET NO.:

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3261 of 2006

Office Notes, Office Memoranda of coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr N.V.Bandiwadekar,for the petitioner.

CORAM: D.B.BHOSALE,J.
DATED: 27.09.2006

P.C.:

Heard the learned counsel for the petitioner.

By this writ petition, the petitioner-defendant has impugned the order dated 21.11.2005, by which the application filed by the respondent-plaintiff under Order 6 Rule 17 of CPC, has been allowed. By that application, the respondent sought to introduce a prayer for removal of encroachment and consequential amendment in the body of the plaint. The suit was filed for injunction simplicitor and it was dismissed by the trial Court vide its judgment and order dated 21.1.1993. The respondents' appeal against the said order

is pending. Pending appeal, it appears that the suit property was encroached upon and, therefore, the amendment was sought by the respondent-plaintiff seeking removal of the encroachment. I perused the order. In my opinion, the Court below, for the reasons stated in the order, has rightly allowed the application. Mr Bandiwadekar, learned counsel for the petitioner, challenged the order mainly on the ground that the amendment changes the nature of suit. In the facts of the case, in my opinion, the amendment became inevitable. The impugned order does not suffer from any infirmity warranting interference by this Court in its jurisdiction under Article 227 of the Constitution of India. In the circumstances, this writ petition is dismissed.

(D.B.BHOSALE,J.)